

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SAMMY BROWN,

Plaintiff,

v.

**ORDER**

J DONAHUE, TAMMY HICKEY, and  
MS. O'DELL,

6:22-CV-6549 EAW

Defendants.

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*Pro se* Plaintiff Sammy Brown (“Plaintiff”), a prisoner currently confined at Elmira Correctional Facility (“Elmira”), has commenced an action in this District. (Dkt 1). By Order dated January 2, 2024, the Court directed the Clerk of Court to prepare the necessary papers so that the United States Marshals Service (“USMS”) could serve defendants Donahue, Hickey, and O’Dell with Plaintiff’s amended complaint. (Dkt. 15). The USMS attempted to serve Donahue, Hickey, and O’Dell by mail at Elmira. (Dkt. 19). On February 22, 2024, the USMS returned a Process Receipt and Return (USM-285) stating that Donahue, Hickey, and O’Dell did not return a signed Acknowledgment of Receipt of Summons and Complaint. (*Id.*). On May 24, 2024, the Court extended the time for service to August 26, 2024. (Dkt. 29). To date, Donahue, Hickey, and O’Dell have not answered or otherwise responded to the amended complaint.

## **ORDER**

Accordingly, the Court HEREBY ORDERS that the New York Attorney General's Office ascertain the full names and last known service addresses for Donahue, Hickey, and O'Dell. *See Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997) (per curiam). The Attorney General need not undertake to defend or indemnify Donahue, Hickey, and O'Dell at this juncture. This Order merely provides a means by which Plaintiff may name and properly serve Donahue, Hickey, and O'Dell as instructed by the Second Circuit in *Valentin*.

The Attorney General shall produce the information specified above by November 5, 2024. Once this information is provided, the amended complaint shall be deemed amended to reflect the full names of the defendants as provided in the *Valentin* response and the Clerk of Court shall reissue summons and cause the USMS to serve copies of the summons, amended complaint (Dkt. 12), and the Court's Order dated January 2, 2024, (Dkt. 15), upon Donahue, Hickey, and O'Dell, unpaid fees to be recoverable if this action terminates by monetary award in Plaintiff's favor. Should the *Valentin* response return personally identifiable information such as a home address, that information shall be given to the USMS solely for the purpose of effecting service; the information will otherwise remain confidential.

The Clerk of Court shall send a copy of this Order to Ted O'Brien, Assistant Attorney General in Charge, Rochester Regional Office <Ted.O'Brien@ag.ny.gov> .

The Attorney General's response shall be filed either electronically in CM/ECF by selecting "*Valentin* Response" under "Discovery Documents" or by mail to the Pro Se Litigation Unit, United States District Court, 100 State Street, Rochester, New York 14614.

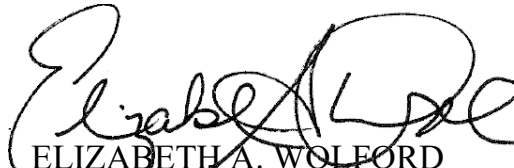
If Donahue, Hickey, or O'Dell fails to acknowledge service by mail and the USMS is compelled to personally serve him/her, this Court may hold the defendant responsible for the cost of such personal service. *See* N.Y.C.P.L.R. § 312-a(b); *accord* Fed. R. Civ. P. 4(d)(2).

The deadline to effect service is extended 90 days from the date the Clerk's Office reissues summons. *See* Fed. R. Civ. P. 4(m).

If service is not complete within 90 days of the date of the reissued summons, Plaintiff must file a motion with the Court requesting an extension of time to effect service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

SO ORDERED.

Dated: October 15, 2024  
Rochester, New York



ELIZABETH A. WOLFORD  
Chief Judge  
United States District Court